

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 4103 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE M.S. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SMT. JUMABEN BHURABHAI AJANA
VERSUS
STATE OF GUJARAT

Appearance:

MR BP MUNSHI for the Petitioner
MR HN SOMPURA, AGP, for Respondent No.1
MR HS MUNSHAW for Respondent No.2
MR NR CHOKSI for Respondent No.5
MR MIG MANSURI for Respondent No.6

CORAM : MR JUSTICE M.S. SHAH
Date of Decision : 24/08/2001

C.A.V. JUDGMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 20-8-1998 passed by the State Government through the Joint Secretary, Panchayats Rural Housing and Rural Development Department dismissing the petitioner's revision application under section 259 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as 'the Act'). By the said order, the State Government has confirmed the order dated 1-8-1997 of the District Development Officer, Banaskantha District setting aside the petitioner's election as Up-Sarpanch of a village Panchayat.

2. The petitioner was elected as a member of Morikha Gram Panchayat of Taluka Vav in Banaskantha District. The petitioner's election was on a seat reserved for women candidates. At the first meeting of the Gram Panchayat held on 26-3-1997 at 11-00 a.m., the petitioner was declared as elected uncontested Up-Sarpanch of the Gram Panchayat. Respondent No.6 whose nomination for the said election was rejected on the ground that it was filed beyond the prescribed time, challenged the petitioner's election to the office of Up-Sarpanch in an Election Petition before the District Development Officer, Banaskantha respondent No.2 herein. The District Development Officer held that the nomination form of respondent No.6 was illegally rejected by the Extension Officer who was at the relevant time working as the Election Officer. The District Development Officer also held that under the Gujarat Village Panchayats (Up-Sarpanch) Election Rules, 1994, (hereinafter called the 'Election Rules') the Sarpanch of the Village Panchayat was supposed to be the Election Officer and therefore the election was wrongly held by the Extension Officer, respondent No.4 herein. On both the aforesaid grounds, the District Development Officer by his order dated 1-8-1997 (Annexure B) set aside the election of the petitioner to the office of Up-sarpanch. Aggrieved by the said order, the petitioner preferred Revision Application No.315 of 1997 before the State Government. During pendency of the revision application, the State Government granted interim stay of the operation of the order of the D.D.O.. By the impugned order dated 20-2-1998 (Annexure A), the State Government dismissed the revision application. Hence, this petition.

3. While issuing notice on this petition on 21-5-1998, this Court granted ad-interim relief staying the operation and implementation of the aforesaid orders

of the State Government and the D.D.O.. The said interim relief has been continued from time to time with the result that, the petitioner has continued to hold the office of Up-Sarpanch. In view of the nature of the controversy and the ad-interim relief which has been continuing for the last more than three years, the learned counsel for the parties jointly requested the Court to take up the petition for final disposal. Accordingly, the petition was heard finally and is being disposed of by this judgment.

4. Mr. B.P. Munshi, learned counsel has made the following submissions:

4.1 The finding given by the authorities that respondent No.4 - Extension Officer had no authority to accept or reject the nomination forms is misconceived because respondent No.4 was already notified as Election Officer as per the notification dated 13-3-1997 issued by the Taluka Development Officer, Vav (Annexure D). As per the Election Rules, the Sarpanch of the Village Panchayat is to preside over the first meeting of the Panchayat at which the elections are to be held to the office of Up-Sarpanch. Since the meeting was convened at 11-00 a.m., the Sarpanch presided over the meeting of the Gram Panchayat only from 11-00 a.m. but the nomination forms were required to be filed two hours before the scheduled time of the meeting of the Gram Panchayat. Hence, the duties of the Election Officer were required to be discharged by respondent No.4 Extension Officer who was already nominated as such by the Taluka Panchayat's aforesaid notification.

In a similar matter of Kesharbhai Chaudhary vs.

D.D.O. Banaskantha, (revision application No.305/96 decided on 20-1-1998 - Page 71 of the paper book), the same Joint Secretary to the State Government in the Panchayats Department (Mr. K.B. Vasava) had taken the view that where the Sarpanch presided over the meeting of the Gram Panchayat for electing the Up-Sarpanch at 11-00 a.m., but the nomination forms were accepted by the Election officer nominated by the Panchayat, there was nothing wrong with the elections to the office of Up-Sarpanch of Village Mahi, Taluka Vadgam.

4.2 Respondent No.6 had submitted his nomination

form at 9-15 a.m.. that was beyond the time limit of 9-00 a.m.. Under Rule 5 of the Election Rules, nomination forms were required to be filed two hours before the scheduled time of the first meeting of the Gram Panchayat. Hence, the rejection of the nomination form of respondent No.6 was in accordance with law and the authorities ought not to have set aside the election of the petitioner.

4.3 The petitioner has already completed more than four years and four months and only a few months are left before the expiry of the term and for this reason also, the Court may set aside the impugned orders and permit the petitioner to continue to hold the office of Up-Sarpanch.

5. On the other hand, Mr. M.I.G. Mansuri for respondent No.6 has submitted that both the authorities below have set aside the election of the petitioner on findings given by them on questions of fact and, therefore, this Court may not interfere with the said orders in a petition under Article 226 of the Constitution.

6. The Court has also heard learned A.G.P. Mr. H.N. Sompura, Mr. Munshaw for District Development Officer, Banaskantha and Mr. Choksi for respondent No.5. They have submitted that this is essentially a dispute between the two rival candidates.

7. Before dealing with the rival submissions, it is necessary to refer to relevant sections of Gujarat Panchayats Act and the relevant Rules of the Election Rules, which read as under:

Sections:

2. Definitions - In this Act, unless the context otherwise requires -

(1)

(2)

(3)

(4) "competent authority" means such Government Officer, panchayat or authority as the State Government may, by notification in the Official Gazette, appoint to perform the

functions of a competent authority under such provisions of this Act and in respect of such panchayats as may be specified in the said notification ;

51. First meeting of panchayat and election of Sarpanch and Up-Sarpanch. -

(1) On the constitution of a village panchayat or on its reconstitution under section 13 or under any other provision of this Act, there shall be called the first meeting thereof for the election of Up-Sarpanch from amongst the members of the panchayat.

(5) In the case of village panchayat, where there has been a failure to elect a Sarpanch or where the elected Sarpanch is not willing to take office, the first meeting of such village panchayat shall be presided over by such officer as the competent authority may by order appoint in that behalf.

Such officer shall have powers and follow such procedure as may be prescribed but shall not have the right to vote.

Rules:

2. Definitions. - (1) In these rules, unless the context otherwise requires,

(b) "competent authority" means the officer appointed as competent authority under clause (4) of section 2 to perform the functions of a competent authority under sub-section (4) of section 51 ;

(f) "Presiding Officer" means the Sarpanch, or as the case may be, an officer appointed to preside over the first meeting of the panchayat by the competent authority under sub-section (5) of section 51;

(g) "Secretary" means the Secretary of the village panchayat;

3. Notice of meeting. - The competent authority shall after having fixed the day of the first meeting under sub-section (4) of section 51 cause a notice of such meeting to be

given to every member of the panchayat at least three clear days before the date of such meeting.

5. Nomination of candidates.- (1) Not less than two hours before time fixed for the meeting for the election of an Up-Sarpanch, any member of the Panchayat may nominate any other member for election as Up-Sarpanch and deliver to the Presiding Officer, nomination paper in Form A appended to these rules, signed by himself as a proposer.

(2) A nomination paper so delivered shall be signed by the candidate as assenting to the nomination.

7. Scrutiny of nominations.- At the meeting convened under sub-section (1) of section 51 of the Act the Presiding Officer shall scrutinise the nomination papers delivered to him under rule 5 and shall thereafter read out the names of the members who in his opinion have been duly nominated together with the names of their proposers.

9. Election. - (1) If only one candidate has been validly nominated for the office of Up-Sarpanch, he shall be declared to have been elected as Up-Sarpanch.

8. Mr.Munshi for the petitioner is on firm ground while levelling the first challenge to the impugned orders that the Sarpanch was to preside over the first meeting which was scheduled to be held on 26-3-1997 at 11-00 a.m., but the work of accepting the nomination forms and scrutinising them was election work for which respondent No.4 herein - an officer of the rank of Extension Officer was appointed by notification dated 13-3-1997 (Annexure D). Since the Extension Officer was accordingly appointed as the Election Officer, there was nothing wrong in his accepting the nomination forms and scrutinising them. In fact the same Joint Secretary who dismissed the petitioner's revision application held in Revision Application No.305/96 decided on 20-1-1998 that there was nothing wrong with the Extension Officer accepting nomination forms and scrutinising them before the scheduled meeting of the Gram Panchayat and the elected Sarpanch of the Gram Panchayat presiding over the first meeting of the Panchayat for electing the

Up-Sarpanch.

9. Coming to the second ground of challenge, there is no dispute about the fact that by notice dated 20-3-1997 (Annexure E), the first meeting of the Gram Panchayat was scheduled to be held at 11-00 a.m. on 26-3-1997. As per the Election Rules and the said notice dated 20-3-1997, the nomination forms were required to be submitted two hours before the scheduled time of the Gram Panchayat meeting. Since that meeting was scheduled to be held at 11-00 a.m., the nomination forms were required to be submitted at least by 9-00 a.m.. The endorsement made by the Election Officer on the nomination form submitted by respondent No.6 was that it was presented at 9-15 a.m.. It is thus obvious that the nomination form was not presented within two hours of the time fixed for meeting and, therefore, the nomination form was not validly submitted. However, the only ground on which the authorities below have accepted the case of respondent No.6 is that Extension Officer respondent No.4 who had accepted the nomination form of the petitioner at 8-15 a.m. and also of respondent No.6 at 9-15 a.m. had stated before the D.D.O. that he did not have a watch of his own nor was there any clock in the office of the Gram Panchayat. It is difficult to believe in these days that not only the Gram Panchayat office would not have a wall clock (which hardly costs about Rs.100/-) but also that the Election Officer a Gazetted Class-II Officer would not have a wrist watch of his own. Even assuming it to be so, there was nothing wrong with the Election Officer looking at the wrist watch of other persons in the office when respondent No.6 submitted his nomination form and respondent No.4 noted the time. Of course, it was open to the Election Officer to refuse to accept the nomination form on the ground that the time limit as stipulated in the notice Annexure E and in the Election Rules was over. However, since the nomination form was presented after 9-00 a.m., it was not a valid nomination as required by Rule 5 of the Election Rules.

10. Even so, the Court might not have preferred to interfere with the aforesaid finding of the two authorities below if respondent No.6 had produced the affidavits of other members of the Panchayat in support of his case that his nomination form was rejected even though presented before 9-00 a.m. or if respondent No.6 had produced the affidavits of a majority of the members of the Gram Panchayat (total eight including Sarpanch) that they would have elected respondent No.6 if such an

opportunity was made available to them. In this set of circumstances, when respondent No.6 has not chosen to get such affidavits filed, in spite of opportunity offered to respondent No.6 (by adjourning the further hearing of the petition from 26-7-2001 to 31-7-2001 and even after hearing the arguments on 31-7-2001, the matter was ordered to be listed on 2-8-2001 and again on 9-8-2001, thereafter the judgment was reserved for more than two weeks), it appears to the Court that the interests of justice demand that the election of the petitioner who was elected as the Up-Sarpanch of the Morikha Gram Panchayat on 26-3-1997 and whose term is till March, 2002 (i.e. out of 5 year term, only 7 months are left) need not be disturbed and, therefore, the impugned orders passed by the D.D.O. and the State Government through the Joint Secretary are required to be set aside.

11. In view of the above discussion, the petition is allowed. The impugned judgments and orders at Annexures A and B dated 20-2-1998 and 31-7-1997 / 1-8-1997 respectively are quashed and set aside. The Election Petition before the District Development Officer, Banaskantha challenging the election of petitioner Smt. Jumaben Bhurabhai Ajana as Up-Sarpanch of the Morikha Gram Panchayat is hereby dismissed.

Rule is made absolute with no order as to costs.

zgs/-